

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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SEAN WARD,

Petitioner,

v.

KATHLEEN GERBING and the ATTORNEY
GENERAL OF THE STATE OF NEW YORK,
Respondents.
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**ORDER ADOPTING REPORT
AND RECOMMENDATION**

19 CV 547 (VB)

Before the Court is Magistrate Judge Paul E. Davison’s Report and Recommendation (“R&R”), dated June 28, 2022 (Doc. #20), on Sean Ward’s counseled petition for a writ of habeas corpus. Petitioner pleaded guilty in Westchester County Court to attempted murder in the second degree (two counts) and criminal possession of a weapon in the second degree, and was sentenced to a determinate term of twelve years’ imprisonment and five years of post-release supervision.

Judge Davison recommended that the Court deny the petition in its entirety. Specifically, Judge Davison found petitioner’s claim that his guilty plea was not voluntary was without merit, and that petitioner’s claim that his guilty plea was not intelligent was unexhausted and therefore not reviewable. The magistrate judge also found that the latter claim was deemed exhausted but procedurally barred because petitioner no longer had remedies available in state court to litigate the claim, but that because he failed to show actual innocence or cause for the procedural default and resulting prejudice the claim remained unreviewable.

For the following reasons, the R&R is adopted as the opinion of the Court, and the petition is DENIED.

Familiarity with the factual and procedural background of this case is presumed.

A district court reviewing a magistrate judge's report and recommendation "may accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge." 28 U.S.C. § 636(b)(1). Parties may raise objections to the magistrate judge's report and recommendation, but they must be "specific[,] written," and submitted within fourteen days after being served with a copy of the recommended disposition, Fed. R. Civ. P. 72(b)(2); 28 U.S.C. § 636(b)(1), or within seventeen days if the parties are served by mail. See Fed. R. Civ. P. 6(d).

When a party submits a timely objection to a report and recommendation, the district court reviews the parts of the report and recommendation to which the party objected under a de novo standard of review. 28 U.S.C. § 636(b)(1)(C); see also Fed. R. Civ. P. 72(b)(3). The district court may adopt those portions of the recommended ruling to which no timely objections have been made, provided no clear error is apparent from the face of the record. See Wilds v. United Parcel Serv., Inc., 262 F. Supp. 2d 163, 169 (S.D.N.Y. 2003). The clearly erroneous standard also applies when a party makes only conclusory or general objections, or simply reiterates his original arguments. See Ortiz v. Barkley, 558 F. Supp. 2d 444, 451 (S.D.N.Y. 2008).

Petitioner, who is represented by counsel, did not object to Judge Davison's thorough and well-reasoned R&R.

The Court has carefully reviewed the R&R, as well as the petition and the underlying record, and finds no error, clear or otherwise.

CONCLUSION

Accordingly, the Court adopts the R&R as the opinion of the Court, and the petition for a writ of habeas corpus is DENIED.

The Clerk is instructed to enter judgment accordingly and close this case.

As petitioner has not made a substantial showing of the denial of a constitutional right, a certificate of appealability will not issue. See 28 U.S.C. § 2253(c)(2); Love v. McCray, 413 F.3d 192, 195 (2d Cir. 2005).

The Court certifies, pursuant to 28 U.S.C. § 1915(a)(3), that any appeal from this order would not be taken in good faith, and therefore in forma pauperis status is denied for the purpose of an appeal. See Coppedge v. United States, 369 U.S. 438, 444–45 (1962).

Dated: August 12, 2022
White Plains, NY

SO ORDERED:

A handwritten signature in black ink, appearing to read 'Vincent Briccetti', written over a horizontal line.

Vincent L. Briccetti
United States District Judge